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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1890.**

No. 306.

ELLIS G. HUGHES, PLAINTIFF IN ERROR,

*vs.*

THE DUNDEE MORTGAGE AND TRUST INVESTMENT COMPANY (LIMITED).

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

**FILED NOVEMBER 28, 1887.**

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1 UNITED STATES OF AMERICA, } ss:
*District of Oregon,* }

To the Dundee Mortgage and Trust Investment Company, Limited, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October, A. D. eighteen hundred and eighty-seven, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Oregon, wherein Ellis G. Hughes is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said district, this Dec. 28th, 1886.

MATTHEW P. DEADY,
*U. S. District Judge, Oregon.*

Filed Dec. 28, 1886.

R. H. LAMSON, *Clerk.*

DISTRICT OF OREGON, *ss:*

I certify that on the 28th day of December, 1886, at Portland, Multnomah county, in said district, I duly served the within citation on writ of error upon the therein named Dundee Mortgage and Trust Investment Company, Limited, by delivering to Hugh Roger, agent for said company, personally a true copy of said citation on writ of error, duly certified to by me as U. S. marshal for said district.

PENUMBRA KELLY,
*United States Marshal,*
By ED. D. CURTIS, *Deputy.*

[Endorsed:] No. 1065. U. S. circuit court, district of Oregon. Hughes *vs.* D. M. & T. I. Co. Citation on writ of error. Filed Dec. 28, 1886. R. H. Lamson, clerk.

2 In the Supreme Court of the United States.

ELLIS G. HUGHES
*vs.*
THE DUNDEE MORTGAGE AND TRUST INVESTMENT COMPANY, Limited. } No. 1065. Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of Oregon, Greeting:

Because in the records and proceedings, as also in the rendition fo the judgment of a plea which is in the said circuit court, before

the Honorable Matthew P. Deady, one of you, between Ellis G. Hughes, plaintiff and plaintiff in error, and The Dundee Mortgage and Trust Investment Company, Limited, defendant and defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by complaint doth appear, and we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid, and in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. eighteen hundred and eighty-seven, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being then and there inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States of America should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this December 28, 1886.

R. H. LAMSON,
*Clerk of the Circuit Court of the United States for the District of Oregon,*
By R. B. LAMSON,
*Deputy Clerk.*

Seal United States Circuit Court, Oregon.

[Endorsed:] 1065. In the Supreme Court of the United States. Ellis G. Hughes *vs.* The Dundee Mortgage and Trust Investment Company, Limited. Writ of error.

3 * * * * * * *

[Endorsed:] In the Supreme Court of the United States. Ellis G. Hughes *vs.* The Dundee Mortgage and Trust Investment Company, Limited. Copy writ of error. Filed —— —, 188–. —— ——, clerk, by —— ——, deputy clerk.

4 In the Circuit Court of the United States for the District of Oregon. April Term, 1884.

Be it remembered that on the 5th day of September, 1884, there was duly filed in the circuit court of the United States for the district of Oregon a complaint in words and figures as follows, to wit:

5 In the Circuit Court of the United States for the District of Oregon.

ELLIS G. HUGHES
*vs.*
THE DUNDEE MORTGAGE AND TRUST INVESTMENT COMPANY, Limited. } No. 1065.

Comes now the plaintiff and for cause of this his complaint alleges—

That the plaintiff is a citizen in and a resident of the State of Oregon.

That the defendant, The Dundee Mortgage and Trust Investment Company, Limited, is a corporation duly organized and incorporated under the laws of the United Kingdom of Great Britain and Ireland and having its principal office and place of business in Dundee, Scotland; that it is at this time lawfully carrying on business in the State of Oregon, and that William H. Effinger, a citizen of the State of Oregon and of the United States, is at this time the duly appointed and acting attorney-in-fact of said corporation, on whome service of summons may be made in all actions and suits against it in the courts of the State of Oregon or the courts of the United States within said State of Oregon.

That the Oregon and Washington Trust Investment Company, Limited, was continuously from the first day of January, 1875, to the thirty-first day of January, 1880, a corporation duly organized and incorporated under the laws of the United Kingdom of Great Britain and Ireland, and during all of said period was lawfully carrying on business in the State of Oregon and Territory of Washington through an office or agency in the city of Portland, in said State of Oregon.

6 That the business, enterprise, and object of the said Oregon and Washington Trust Investment Company, Limited, and in which it was engaged during the period aforesaid, was, among other things, the lending of money in the State of Oregon and Territory of Washington on the security of mortgage liens on real estate situated in said State and Territory.

That during all of the period aforesaid the plaintiff was an attorney-at-law, duly admitted and practising, and having his office and place of business in the city of Portland, in the State of Oregon.

That during said period the plaintiff did, at the special instance and request of the said Oregon and Washington Trust Investment Company, Limited, and for its use, benefit, and behoof, make and issue to it in writing and under his hand his certain five hundred and fifty-four separate certificates of title, which were issued as upon a like number of loans made by said company, a separate certificate being issued upon each of said loans, and wherein and whereby he did, to the extent specified in each of said certificates and in accordance with the legal effect thereof, become responsible to said corporation that the title to the real estate on which it took mortgage liens to secure the repayment of its loans was absolute, in fee simple, in the party or parties making the mortgage thereon in favor of said company, and free from all manner of liens and incumbrances, and that the mortgage made in favor of said company was the first lien thereon.

That said Oregon and Washington Trust Investment Company, Limited, undertook and agreed to pay the plaintiff the reason-

7 able value of the service rendered and responsibility assumed by him to it in issuing to it the certificates of title aforesaid, and that said service and responsibility were of the reasonable value

of one per cent. on the amount of each loan respectively covered by each separate certificate of title.

That the aggregate amount of the 554 loans on and as for which the plaintiff issued a like number of certificates of title, as hereinbefore set out, was the sum of $1,122,274.00 and the reasonable value of issuing said 554 certificates of title was and is $11,222.74, and that by reason of the issuing of said 554 certificates of title as aforesaid the said Oregon and Washington Trust Investment Company, Limited, became and was on the 31st day of January, 1880, indebted to the plaintiff in the said sum of $11,222.74.

That on the said 31st day of January, 1880, the said Oregon and Washington Trust Investment Company, Limited, amalgamated with and assigned, set over, and conveyed all and every of its property and assets to the defendant herein, and in consideration thereof the said defendant did assume and agree to pay all and every of the debts and liabilities of the said Oregon and Washington Trust Investment Company, Limited, and did therein assume and agree to pay the aforesaid debt of said company to the plaintiff.

That neither the said Oregon and Washington Trust Investment Company, Limited, or the defendant herein have ever paid to the plaintiff the said sum of $11,222.74 or any part or parcel thereof, but that said sum and the whole thereof is now justly due and owing from the defendant to the plaintiff, and has been so due and
8–63 owing from the said 31st day of January, 1880, and the plaintiff is entitled to have and recover said sum of and from the defendant, with interest thereon, as allowed by law, from said 31st day of January, 1880.

That at this date, to wit, the 5th day of September, 1884, there is justly due and owing from the defendant to the plaintiff, as for principal of and interest on said sum of $11,222.74, the sum of $15,350.19.

Wherefor- the plaintiff prays judgment against the defendant for the sum of $15,350.19, with interest thereon, as allowed by law, from the 5th day of September, 1884, and for his costs and disbursements.

GEO. H. WILLIAMS AND
C. B. BELLINGER,
*Att'ys for Pl'ff.*

UNITED STATES OF AMERICA, } ss:
*District of Oregon,* }

I, Ellis G. Hughes, being duly sworn, on oath do say that I am the plaintiff in the foregoing-entitled action; that I have read the foregoing complaint and know the contents thereof, and that the same is true as I verily believe.

ELLIS G. HUGHES.

Subscribed and sworn to before me this 5th day of September, 1884.

[SEAL.]

J. R. STODDARD,
*Notary Public in and for Oregon.*

Endorsed: Filed Sept. 5, 1884. R. H. Lamson, clerk.

64 * * * * * * *

And afterwards, to wit, on the 11th day of July, 1885, there was duly filed in said court a second amended answer in words and figures as follows, to wit:

65 In the Circuit Court of the United States for the District of Oregon.

ELLIS G. HUGHES
*vs*
THE DUNDEE MORTGAGE AND TRUST INVESTMENT CO., Limited. } Action at Law. No. 1065.

Defendant, for this its second amended answer to the complaint of plaintiff, filed by leave of court, says it is not true that during the period named in the complaint or during any portion thereof, or at any other time, the plaintiff did, at the instance or request of the Oregon and Washington Trust Investment Company, Limited, named in the complaint, make or issue to said trust investment company any of the certificates of title named in the complaint.

And defendant says that it is not true that the said Oregon and Washington Trust Investment Company, Limited, undertook or agreed to pay the plaintiff the reasonable value of said alleged services or said responsibility assumed by said plaintiff to said trust company in issuing to it the said certificates of title or any of them, or that said company undertook or agreed to pay for such service or responsibility any sum or value whatever, or that said alleged service was of the reasonable value of one per cent. on the amount of each loan respectively covered by each separate certificate of title or any other sum or value whatever to said company or to this defendant or any one.

And defendant says it is not true that the reasonable value of issuing said five hundred fifty-four certificates of title as aforesaid was or is the sum of $11,222.54 or any other sum whatever, or
66 that by reason of the issuing of said alleged five hundred fifty-four certificates of title as aforesaid, or any of them, the said Oregon and Washington Trust Investment Company, Limited, became or was, on the 31st day of January, 1880, or at any other time, indebted to the plaintiff in the said sum of $11,222.54 or in any other sum whatever.

And defendant says that it is not true that this defendant, in consideration of any amalgamation of said Oregon and Washington Trust Investment Company, Limited, with this defendant or any assignment of the property or assets or any portion thereof to this defendant or for any other consideration, did assume or agree to pay any liability of said trust investment company to said plaintiff or the said alleged debt or liability of said trust investment company to the plaintiff or any portion thereof.

And defendant says that it is not true that at the time of said

amalgamation or at any other time there was due the plaintiff from said Oregon and Washington Trust Investment Company, as for principal or interest on said alleged sum of $11,222,54, the sum of $15,350.19 or any other sum.

And defendant says that it is not true that there was justly or at all due or owing from said defendant on the 31st day of January, 1880, or has been since that date or is now due the plaintiff from this defendant, by reason of said alleged indebtedness to said plaintiff from said trust investment company or for any other cause, any sum whatever, or that plaintiff is entitled to recover from defendant any sum, with interest as allowed by law or at any other rate, from any date whatsoever, or without any interest.

67 And defendant says that it is not true that at the date mentioned in the complaint, to wit, the 5th day of September, 1884, or at any other time, there was justly or at all due or owing from defendant to plaintiff, as for principal or interest on said sum of $11,222.54 or any other sum, the sum of $15,350.19 or any other sum.

And for further defense to this action defendant alleges that the plaintiff ought not to have or maintain the same, because defendant alleges that at the time of said amalgamation of said Oregon and Washington Trust Investment Company, Limited, with the defendant herein the said plaintiff was the general attorney for the defendant, and prior thereto, and as such attorney did advise defendant in regard to the making and effecting said amalgamation with said trust investment company and the assumption of its debts by this defendant, and prior to and at the time of said amalgamation plaintiff well knew that the defendant and its officers and agents supposed and believed that they had entered into no contract with plaintiff, either express or implied, to pay for any such certificates of title as are described in the complaint or any of said certificates of title, and that they did not know that plaintiff claimed any indebtedness against said trust investment company for the making of said certificates of title or any of them, and that they supposed and believed that all services rendered by the plaintiff in the making and furnishing said certificates of title and responsibility therein and thereby assumed had been fully paid for by the respective borrowers of the various loans for which each separate certificate was issued; but that plaintiff, in order to induce said defendant to enter into said amalgamation and to contract

68 to pay the obligations and debts of said trust investment company, did, in fraud of defendant's rights, omit to state and disclose that he had any claim whatever against said trust investment company, and that thereupon said defendant, induced as aforesaid by the said wrongful omission of said plaintiff to disclose his said claom and believing him to have no claom against said investment company, and being misled and induced thereby, did enter into and make said amalgamation with said trust investment company and agree to pay its outstanding liabilities, and that defendant would not have entered into said agreement had it known or supposed that said trust investment company was indebted to plaintiff

as by him claimed, and that said plaintiff should be and is estopped to claim any of his said alleged and claimed indebtedness as against this defendant.

And defendant, for another defense to the cause of action set forth in the complaint, alleges that said Oregon and Washington Trust Investment Company, during the period set forth in the complaint, being engaged in the State of Oregon and Washington Territory in the loaning of money for interest, taking as security for the repayment thereof, principal and interest, first-mortgage liens on real estate situated in said State and Territory, did agree with the plaintiff as follows: That said company being able to control a large and profitable business in the certification of titles submitted to it as mortgage securities for loans, said plaintiff, in consideration of being appointed attorney for the said company, with the right to charge fees to borrowers on a scale of fees fixed by said company, undertook, among other things, to issue his certificates of title
69 to said company guaranteeing the title to such real estate to be in fee simple and unencumbered in the borrower, and that the mortgage lien to be taken by said company was the first lien and encumbrance on such real estate, and that his remuneration for such service and responsibility should be the fees so charged and recovered from said borrowers as aforesaid, and that he should make no charge for the making or issuing of said certificates of title or any of them against said company, but should look solely to the fees from said borrowers for his remuneration; and defendant alleges that all of said certificates of title mentioned in the complaint were made and issued under and in pursuance of the aforesaid agreement and at the instance and request of the respective borrowees and were accepted by said company on the aforesaid condition that said company should incur no liability to the plaintiff therefor, but that all compensation for such service and liability therefor shall be bourne by said respective borrowers.

And defendant, for another defense to the cause of action set forth in the complaint, alleges that during the period named in the complaint it was the established rule and practice of the said Oregon and Washington Trust Investment Company named in the complaint, which company was then engaged in the State of Oregon and Territory of Washington in the loaning of money for interest, taking as security first-mortgage liens in said State and Territory on real estate situated therein, to make no loan except on a title warranted and certified to by a qualified attorney of the supreme court of the said State of Oregon to be in fee simple and unencumbered, and the said company during the period named
70 in the complaint of plaintiff required each borrower to procure the certificate of the plaintiff warranting and certifying his said title as aforesaid, and that such borrower pay to the plaintiff the fees fixed by said company in each case or loan as attorney's fees, payable by borrower. In consideration whereof, and as inducement to said company to make the loan in each case referred to, the plaintiff agreed to and did issue said certificates of title de-

scribed in the complaint accordingly, and the plaintiff received the fees so fixed as aforesaid.

And defendant, for another defense, alleges that each of said five hundred and fifty-four loans so made by said Oregon and Washington Trust Investment Company was a separate and distinct transaction and had no relation or connection with any other loan, and that the making and issuing of each of said five hundred fifty-four certificates of title was a separate and distinct service, and that of the loans made, described in the complaint, the sum of eight hundred eighty-one thousand nini hundred and seventy dollars was made more that six years before the commencement of this action, and that the certificates of title for said sum were *and* issued more than six years prior to the commencement of this action, and that the alleged cause of action for the reasonable value for issuing certificates of title for said sum, to wit, the sum of $8,819.70, accrued more than six years prior to the commencement of this action.

And for another defense to the plaintiff's cause of action defendant alleges that plaintiff ought not to have or maintain this
71 action, because that on the 12th day of February, A. D. 1883, the said plaintiff commenced an action at law against this defendant in this honorable court, in his complaint in which action plaintiff stated and alleged that on August 1st, 1876, the Oregon and Washington Mortgage Savings Bank, Limited, appointed plaintiff to be its attorney, and that said bank became indebted to him, plaintiff, in the sum of $5,500.00, for services rendered to it by plaintiff as such attorney between July 1st, 1876, and January 1st, 1882, in consulting and advising said bank and other acts and attendances in and upon its business, at its request, and for money paid out by plaintiff in and about the said business; that plaintiff did further allege in said complaint that about June 30th, 1882, said bank amalgamated with defendant, and that defendant assumed to pay the debts and liabilities of said bank, including its indebtedness to plaintiff; that plaintiff did further allege in said complaint that said Oregon and Washington Trust Investment Company, Limited, did, about January 1st, 1876, appoint plaintiff to be its attorney to attend to its business in Oregon and Washington Territory, and that in pursuance of such appointment plaintiff did, between January 1st, 1876, and January 1st, 1880, render service to said last-named corporation in counselling and advising it about its business and other acts and attendances in and about the said business, at its request, of the value of $2,500.00 per annum, and that about January, 1880, said Oregon and Washington Trust Investment Company, Limited, amalgamated with defendant, and that defendant assumed its indebtedness and liabilities, including its indebtedness to plaintiff; and that thereafter plaintiff rendered services to defendant as
72 its attorney and paid out money for it up to January 1, 1882, the value of which services and amount of money combined aggregated $2,500.00; that it was also alleged in said complaint in said action that defendant was indebted to plaintiff as its attorney in the sum of $224.80 for services in foreclosing a certain mortgage executed by one Elkins and fully described in said complaint, and

in the further sum of $531.00 for services rendered by plaintiff as such attorney to defendant in a certain suit in which one William Reid was the plaintiff and Joseph Hill and others were the defendants, and that the aggregate of defendant's indebtedness to plaintiff upon said several accounts mentioned in said complaint was the sum of $21,258.80, for which amount judgment was in and by said complaint prayed in favor of the plaintiff and against the defendant; that defendant appeared and made defence to said action, and that such further proceedings were had that, upon trial of the issues therein joined, the judgment of this court was, on August 15th, 1884, rendered in favor of the plaintiff against the defendant for the sum of $8,407.61, besides the sum of $390.05 for costs and disbursements, which judgment remains and is still in full force and effect and in nowise reversed or annul-ed.

And defendant alleges that all the service alleged in the complaint in this present action to have been performed by plaintiff is claimed by him to have been rendered before the commencement of said former action, and that whatever sum of money may be due or owing to plaintiff for and on account of such service was due and owing prior to the commencement of said former action, and that all of said service rendered by plaintiff to said Oregon and Washington Trust Investment Company, Limited, as alleged in the complaint in this action, was performed under and by virtue of the appointment of plaintiff as its attorney, as mentioned in said complaint in said former action, and all of the service claimed by plaintiff in his complaint in this action to have been performed for this defendant was performed under and by virtue of the plaintiff to be defendant's attorney, as specified in said complaint in said former action. Wherefore defendant alleges that plaintiff is by said former judgment forever barred and estopped from recovering herein, and ought not to have or maintain this action.

73–103½

Wherefore defendant prays judgment against plaintiff for the costs and disbursements of this action.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
*Attorneys for Defendants.*

UNITED STATES OF AMERICA, }
*District of Oregon,* } ss:

I, Hugh Roger, being duly sworn, say on oath that I am the managing agent in the State and district of Oregon for the defendant, The Dundee Mortgage and Trust Investment Company, Limited, whose answer the foregoing is, and that said answer is true as I verily believe, and that I make this verification because neither the defendant nor any of its officers qualified to make the same are now in the said district of Oregon.

HUGH ROGER.

Subscribed and sworn to before me this the 11th day of July, A. D. 1885.

PAUL R. DEADY,
*U. S. Circuit Court Commissioner.*

Due acceptance of a certified copy of the original of the foregoing second amended answer is acknowledged this 11 day of July, 1885.

Endorsed: Filed July 11, 1885. R. H. Lamson, clerk.

103¾ * * * * * * *

And afterwards, to wit, on the 15th day of April, 1886, there was duly filed in said court a reply in words and figures as follows, to wit:

104 In the Circuit Court of the United States within and for the District of Oregon.

ELLIS G. HUGHES
*vs.*
THE DUNDEE MORTGAGE AND TRUST INVESTMENT COMPANY, Limited. } No. 1065.

The plaintiff, for his reply to the answer of the defendant herein filed, and being the second amended answer herein, alleges—

For his reply to the first separate defence in said answer set out—

That it is not true, and he denies, that at the time of the amalgamation of the Oregon and Washington Trust Investment Company with the defendant he was the general attorney of the defendant, or that it was any part of his duty to or that he ever did, in fact, as such attorney or otherwise, advise *advise* the defendant as to the making or effecting of said amalgamation with said trust company (save only as to and on one point, as to and on which he was by said defendant specially consulted after the agreement of amalgamation had been entered into and executed by said defendant and said company, which said point bore no relation to, was in anywise connected with, or had any bearing on the question of the assumption by the defendant of said trust company), and he was in nowise bound to, nor was it in any sense his duty to, nor did he ever advise defendant in any manner of way as to its assuming the debts of said company; and it is not true, and he denies, that either prior to or at the time of said amalgamation or at any other time

105 that he well or at all knew that the defendant or its officers or agents or any of them supposed or believed that they had entered into no contract with plaintiff, either express or implied, to pay for the certificates set out in the complaint, or any of them, nor that they, as a matter of fact, did not know that plaintiff claimed indebtedness against said trust company for making any or all of said certificates of title, or that they supposed or believed that any or all service rendered by the plaintiff in the making or furnishing said certificates of title or the responsibility therein or thereby assumed, or any part or portion thereof, had been fully or at all paid for by the respective borrowers of the various loans for which each separate certificate was issued, or that he, either to induce the defendant to enter into said contract of amalgamation or to contract to pay the debts of said trust company, did, in any

fraud of defendant's rights, or as being under any duty or obligation to do so, or otherwise, save as knowing that the defendant and all of its officers and agents were as fully and at large advised of all the facts *as* thereto as he could advise them, omit to state or disclose that he had any claims against said trust company or that the defendant *as* in any manner of way induced by any wrongful or other omission of plaintiff to disclose his said claim, or, in fact, believing him to have no claim against said company, or being in any manner of way misled or induced thereto by any act of omission or commission on the part of plaintiff, did make or enter into said amalgamation with said company and agree to pay its debts, nor is it true in fact, and he denies, that the defendant would not have entered into said agreement had it known or supposed that said company was indebted to plaintiff as claimed, nor should the
106 plaintiff be estopped nor is he estopped to claim any of the said indebtedness against the defendant.

And as to the said matters and things he alleges the truth to be, and that the facts are, that at the time of the making and entering into said agreement and amalgamation alleged to have been made and entered into between the said trust company and the defendant the same persons who were directors, officers, and agents of said trust company were the directors, officers, and agents of the defendant, and the general legal adviser of both said company and defendant at said time, under whose advice and direction the said agreement and amalgamation was entered into, was one Thomas Thornton, a solicitor practicing his profession in Dundee, Scotland, where the principal office of said company and of said defendant were at said time and at all other times located; and the said Thornton had been the general legal adviser, and, with one or two exceptions, the said officers, directors, and agents of the defendant had been the directors, officers, and agents of the said trust company continuously from the first employment of the plaintiff by it and continuously during all the period set out in his complaint during which said certificates were issued and up to the time of said amalgamation; and the contract of employment under which the plaintiff issued said certificates to said company had been prepared by said Thornton and entered into between said company and the plaintiff at the instance of said company and on terms agreed to between the plaintiff and it, and which were fully and at large known to said Thornton and the said directors, officers, and agents of said trust company and of said defendant as aforesaid; and all the facts as to the plaintiff having issued the said certificates and the amount of the loans covered and the responsibility assumed by the plaintiff thereby
107 were at all times known to the directors, officers, and agents of both said trust company and the defendant, as hereinbefore alleged, and therein and thereby (the defendant did have knowledge and notice and knew at the time of the said amalgamation each, every, and all the facts connected with the claim and the amount of the claim of this plaintiff against said trust company as fully and as completely as they were at the time known to this plaintiff, all of which was at the time well known to the plaintiff)

(and as a matter of fact the said trust company was at all times solvent and had at the time of said amalgamation assets largely in excess of all its liabilities, including its liability to plaintiff, and it was at all times a matter of indifference to plaintiff as to whether the said amalgamation was made and defendant became liable for the debts of said company or not).

For his reply to the second separate defence in said answer set out he alleges—

That it is not true, and he denies, that the said Oregon and Washington Trust Investment Company, Limited, did ever at any time or at all agree with the plaintiff that it being able to control a large or profitable business in the certification of titles submitted to it as mortgage securities for loans the plaintiff, in consideration of being appointed attorney for said company with a right to charge fees to borrowers on a scale of fees fixed by said company, undertook, either among other things or at all, except as on the consideration set out in his complaint, to issue his certificates of title to said company, as alleged, or that it was ever agreed that his remuneration for the service and responsibility rendered and assumed in issuing said certificates should be the or any fees charged borrowers, as alleged, or that he should make no
108 charge for the making or issuing said certificates of title or any of them, or that he should look solely or at all to fees from borrowers for his remuneration, or that all or any one or more of said certificates of title were issued under any such agreement or any other agreement save that set out in his complaint herein, or at the request of the respective or any borrowers, or that they were accepted by said company on any condition that it should incur no liability to plaintiff therefor, or that all or any compensation for the service rendered and liability assumed in issuing all or any one or more of them should be borne by the respective or any borrowers or by any one save said company, as alleged in the complaint herein.

For his reply to the third separate defence in said answer set out he alleges—

That it is not true, and he denies, that the said Oregon and Washington Trust Investment Company, Limited, during all or any part or portion of the period named in the complaint, required each or any one or more of the borrowers of the loans on which the certificates of title set out in the complaint were issued to procure the or any certificate of the plaintiff warranting or certifying his title, as alleged in said answer or at all, or that said or any of the borrowers of the loans on which said certificates were issued pay the plaintiff the or any fee fixed by said company as for any fee or compensation for the issuing any one or more of the certificates of title set out in the complaint, or that in consideration of any fees to be paid by any borrower or borrowers or any other consideration, save that said company pay therefor, that he issued said or any one or more of said certificates, or that he has ever received any fees whatever therefor.

109 And for his reply to the fourth separate defense in said answer set out he alleges—

That it is not true, and he denies, that the making or issuing of each or any of the five hundred and fifty-four certificates of title set out in the complaint herein was a separate or a distinct service as between the plaintiff and the said Oregon and Washington Trust Investment Company, Limited, but as thereto the truth is and the facts are that each and every one of said certificates of title were by the plaintiff made, issued, and delivered to said company, and the responsibility therein and thereby assumed by the plaintiff to said company was assumed and incurred by him under and by virtue of one and the same continuous, unbroken, and entire contract of employment of the plaintiff by said company to from time to time, as it should make loans, issue to it and for its use and benefit the said certificates of title, which said contract did not terminate until after the first of January, 1880, and that it is not true, and he denies, that the cause of action as for the sum of $8,819.70, either in law or in fact, accrued more than six years prior to the commencement of this action.

(And for his reply to the fifth separate defense in said action set out he alleges—

(That though it is true that he brought the action alleged in said answer and in said separate defense, that it is not true, and he denies, that said judgment is in full or any force or effect as a bar or estoppel in this action, or as being collectable or subject to being enforced, but that the force of said judgment is at this time suspended, so that it is without force, and) (that it is not true, and he denies, that all or any of the service- rendered by

110 him and constituting the cause of action in this action were rendered under or by virtue of the appointment of the plaintiff as the attorney of the Oregon and Washington Trust Investment Company, Limited, mentioned in said former action, so as that they were or formed any part or parcel of the cause of action set out or sued for in said former action, or so as that they could be in any manner of way joined with the service sued for in said former action as being, forming, or constituting in any manner of way one cause of action then existing in favor of the plaintiff and against the defendant, but) (that in truth and in fact the service- sued for in said former action and those sued for in this action were rendered under and by virtue of contracts separate in fact and in law as to performance and consideration and constituting and being two separate and distinct causes of action, which could in no action have been joined as one cause of action), and that it is not true, and he denies, that he is by the said judgment rendered in said former action in any manner of way barred or estopped from recovering herein or from having or maintaining this action.

And by way of a separate and further reply to said fifth separate defence in the answer set out he alleges—

That while it is true that he brought the action alleged, and that he recovered a judgment therein against the defendant as

alleged, that the said judgment was not at the commencement of this action nor has it at any time since been nor is it now any bar to the maintenance of this action, nor is he thereby barred or estopped from having or maintaining this action or from recovering herein, for that, within ten days from and after the rendering of said judgment in said former action and prior to the commencement of this action, the defendant therein and herein,
111 claiming and alleging that the said judgment in said former action rendered was erroneous and contrary to law and should be reversed, in manner as by law and the rules of court in that behalf existing is provided to be done, took a writ of error in said cause and thereby took and removed said cause into the Supreme Court of the United States as for and to have said judgment reversed, and to be there heard and determined as is in such cases provided to be done, and did, on the taking of said writ of error and within ten days from the rendition of the said judgment as aforesaid, make and file its supersedeas bond or undertaking, with approved security, in manner as is by law in such cases provided to be done, for the superseding of a judgment in this court rendered on the removal of the cause in which it was rendered by writ of error to the Supreme Court of the United States; and that the said cause has never been determined in the Supreme Court of the United States nor has said writ of error ever been dismissed, but this said cause is now pending in the said Supreme Court as for trial therein, and the said supersedeas bond so as aforesaid given has never been withdrawn or set aside, but the supersedeas of said judgment, by the provisions of law and the rules of court in that behalf existing, thereby created has been ever since the giving of said bond and is now in full force and effect; and by reason of the matters and things aforesaid there has not been at any time since the commencement of this action, nor is there now any final judgment in said former action in full and final determination of the same, but said former action was at the beginning of this action, ever since has been, and is now still pending, with no final judgment entered therein; and the said judgment entered in this court therein, as alleged in defendant's
112 answer, is not the final judgment in said former action, but said action now stands as for final judgment to be entered therein on further proceedings to be had therein; nor was said judgment, nor was said judgment of this court in said former action rendered as aforesaid at the time of the bringing of this action, nor has it at any time since been, nor is it now of any force or effect to bar or estop the plaintiff from having or maintaining this action or from recovering herein.

And by way of a second separate and further reply to the said fifth separate and further defence in said answer set out he alleges—

That it is true that he brought the action alleged and that he recovered judgment therein against the defendant herein, as alleged, but that within ten days after the rendition of said judgment in said former action and prior to the commencement of this action the said defendant, claiming and alleging that the judgment so as aforesaid rendered in said former action was erroneous and contrary to

law and should be reversed in manner as by law and the rules of court in that behalf existing is provided to be done, took said cause by writ of error therein to the Supreme Court of the United States and gave therein the necessary bond or undertaking for the superseding of the judgment therein rendered, and thereby removed said cause into the Supreme Court of the United States as for and to obtain a reversal of said judgment, in which said court the said former action has ever since the commencement of this action been and is now pending, by reason of the said allegations and claim of defendant that there is error in said judgment and that the same should be reversed; and the said defendant has ever since the commencement of this action been and is now seeking to have said
113–139 judgment reversed as contrary to law, by reason of which said action on the part of the defendant it is estopped from claiming any right or benefit under said judgment and from alleging that said judgment is a final judgment in said former action in bar of or as an estoppel to the recovery of the plaintiff in this action.

And by way of a third separate and further reply to the fifth separate defense in the answer set out he alleges—

(That at the time of the bringing of said former action and of the trial thereof he did not know that he had the claim against the defendant which is and constitutes his cause of action in this action, nor did he know that the cause of action which is his cause of action in this action existed in his favor and against the defendant until the issues had been joined in and said former action was tried.)

Wherefore he prays judgment against the defendant in accordance with the prayer of his complaint herein.

GEO. H. WILLIAMS,
C. B. BELLINGER, AND
ELLIS G. HUGHES,
*Att'ys for Pl'ff.*

UNITED STATES OF AMERICA,
*District and State of Oregon, Multnomah County,* } ss:

I, Ellis G. Hughes, being duly sworn, on oath do say that I am the plaintiff in the foregoing action; that I have read the foregoing reply and know the contents thereof, and that the same is true as I verily believe.

ELLIS G. HUGHES.

Subscribed and sworn to before me this 14th day of April, A. D. 1886.

HENRY WAGNER, [SEAL.]
*Notary Public in & for Oregon.*

Due service of the within "reply" accepted at Portland, Oregon, this 15th day of April, A. D. 1886, by receiving a copy thereof duly certified to.

H. H. NORTHUP,
*Of Attorneys for Def't.*

(Endorsed:) Filed Apr. 15th, 1886. R. H. Lamson, clerk.

140 * * * * * * *

And afterwards, to wit, on Thursday, the 9th day of December, 1886, the same being the 48th judicial day of the regular October term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

141–147 In the Circuit Court of the United States for the District of Oregon.

ELLIS G. HUGHES
*v.*
THE DUNDEE MORTGAGE AND TRUST INVESTMENT COMPANY, Limited. } No. 1065.

DECEMBER 9TH, 1886.

Now, at this day, comes the defendant in the above-entitled cause, by Mr. John W. Whalley, of counsel, and moves the court for judgment upon the verdict heretofore found herein; and it appearing that the jury in and by said verdict found that the defendant was not indebted to the plaintiff for or on account of the matters alleged in his complaint:

Therefore it is considered that said defendant go hence without day, and that it have and recover of and from the plaintiff herein its costs and disbursements, taxed at sixty-three and $\frac{30}{100}$ dollars.

148 And afterwards, to wit, on the 28th day of February, 1887, there was duly filed in said court a bill of exceptions in words and figures as follows, to wit:

149 In the Circuit Court of the United States for the District of Oregon.

ELLIS G. HUGHES
*vs.*
THE DUNDEE MORTGAGE AND TRUST INVESTMENT COMPANY, Limited. } No. 1065.

On the trial of this cause the plaintiff offered in evidence a resolution of the board of directors of the Oregon and Washington Trust Investment Company, Limited, of date December 17th, 1875, in terms following:

"Attorneyship.—The directors, having in view the recommendation of the local board, resolved and hereby resolve to appoint Mr. Ellis G. Hughes as the local agent of the company, this appointment to subsist during the pleasure of the Dundee board."

And a letter of the secretary of the same company, of date December 18th, 1875, with which said resolution was transmitted to plaintiff, in terms following:

"DUNDEE, 18*th Dec.*, 1875.

"Ellis G. Hughes, Esq., attorney, Portland, Oregon.

"DEAR SIR: Refer-ing to your letters of 1st and 13th Octo., I have now the pleasure to annex extract from the minutes of a meeting of my directors, held yesterday, from which you will see that they have appointed you to the very responsible — of law agent for the company in Portland, Oregon.

150 "I do not at this time require to enlarge upon the duties required from you in this position, as you already have had some considerable experience of them. It may be well, however, to remind you of what you no doubt have very clearly in view, viz., that in all cases the company has a clear & indisputable first mortgage to the subjects pledged in security, and that the company's business is conducted in accordance with the laws of the State of Oregon, the Territory of Washington, and the United States of America are matters for which you are personally responsible to my directors and the company.

"Accept my congratulations upon this appointment, and believe me to be,

"Yours truly, WILLIAM MACKENZIE, *Sec'y.*"

Together with certain printed rules furnished plaintiff at the time of his appointment, in terms following:

"Attorney-at-law.

"It shall be the duty of the company's attorney or attorneys—

"(A) To prepare all mortgages, deeds, notes, coupons, and other documents in connection with the company's loans and to be responsible for their due execution, publication, registration, and validity.

"(B) To be responsible that all mortgages taken are a clear and indisputable first lien upon the subjects mortgaged and to grant certificates to that effect.

"(C) To take charge of and to conduct such proceedings as may from time to time be instituted by the company or in which
151 the company may be interested, subject to such instructions as may be issued thereanent.

"(D) To advise the local board and the directors of any point of legal or other interest to the company which many be developed or come under his or their notice from time to time by legislative or judicial action or otherwise.

"(E) And generally to give his or their best attention to all matters connected with the legal department of the company's business, and to give such information or advice as may from time to time be requested or occur to him or them."

And having proven the issuance of the certificates sued on and introduced testimony as to the value of the service rendered and responsibility assumed in issuing the same, rested his case.

Whereupon, it being then admitted in open court that Addison C. Gibbs had been the attorney of the said Oregon and Washington

Trust Investment Company, Limited, prior to the appointment of the plaintiff as such, that plaintiff had been the partner of said Gibbs and had taken his appointment on the same terms as Gibbs had held his, save only in so far as it might be varied by the written resolution, the letter of the secretary, and the printed rules offered in evidence by the plaintiff, the defendant offered in evidence a letter which, it was admitted, contained the terms of the appointment of Mr. Gibbs, and which is in terms following:

"DUNDEE, 22*d August*, 1874.

"DEAR SIR: The directors of the Oregon and Washington Trust Investment Company, Limited, have had under *a* consideration a recommendation to appoint you as law agent in and concern-
152 ing the preparation of mortgages for loans authorized by them in America, and I have now the pleasure of informing you that they have appointed you as law agent on the following footing:

"1. You shall do all work and carry thro' all procedure and see to the execution and registration and publication of deeds requisite and necessary for giving and securing to the company valid and ef-ectual first and preferable mortgages over real estate for such loans as the directors at Dundee may from time to time sanction and authorize.

"2. In the performance of your duties as law agent aforesaid you shall have regard to the amended rules made by the directors, of which a copy is hereunto annexed.

"3. You shall not directly nor indirectly take or receive for behoof of the company any commission, bonus, or other benefit from a borrower, and the company shall not covenant for or accept in respect of any loan anything but the interest conditioned to be paid in and by the mortgage, and which interest shall never exceed what is lawful and right.

"4. You shall not, by yourself or any or either of your partners, be or act as local directors of the company, and you shall not, directly or indirectly, be interested in any property mortgaged or proposed to be mortgaged to the company or be in copartnery or joint adventure or otherwise connected with any borrower.

"5. Your professional fees against borrowers, including abstract searches, investigating titles, preparation and recording of mortgages, shall in no case exceed what the laws of the State warrant, and, although the law might warrant and allow more, shall never exceed what follows:

"Scale of maximum fees to be charged borrowers by law agent.

153 "For loans under $2,001, 3½ per cent. (exclusive of traveling and hotel bills); for loans under $4,001 and above $2,000, 3 per cent. (exclusive of ditto); for loans above $4,000 and under $20,000, 2½ per cent. (do. do.).

"6. You shall be responsible to the company for the validity and sufficiency of all mortgages prepared or taken by you.

"7. I commend to your attention a letter which I have to-day written to Mr. Ried defining his duties as manager of the company

at Portland, and both you and he will be pleased to understand that that appointment, according to the terms of that letter, and your appointment, according to the terms of this letter, are made upon the footing that the said appointments and terms thereof are lawful and right according to the laws of the States or countries in which the real estates upon which the company's loans may be made are situated and according to the laws of the United States, and nothing shall be done by you or Mr. Reid, directly or indirectly, either in your own names or for your own behoof or in the name or for behoof of the company, to prejudice or affect or imperile in any way the validity and sufficiency of any mortgage granted or to be granted to the company, or to create or give rise to any claim, penalty tax, or other exaction, or loss to the company.

"8. Your appointment is, of course, at the pleasure of the company."

"Yours faithfully, WALTER BAXTER,
"*Interim Secretary.*

"Addison C. Gibbs, Portland, Oregon."

And also parts of a letter written by the plaintiff to John Leng, one of the directors of the Oregon and Washington Trust
154 Investment Company, Limited, of date the 30th day of September, 1876.

The parts offered in evidence being in the terms following:

"SEPTEMBER 30TH, 1876.

"John Leng, Esq., a director of the Oregon and Washington T. I. Co., L., Chicago, Ills.

"DEAR SIR: Press of business prevented my writing you on Thursday last, as I had intended. I therefore thought best to address my letter to you at Chicago instead of San Francisco. Kindly excuse the unavoidable delay.

"To take up separately the different subjects upon which you requested an expression of my views."

* * * * * * * *

Attorneys' fees.

The fees now charged upon each loan as the fees of the attorney for the examination of titles, and of which one-half of one per cent. on the entire amount of the loan is now paid to Mr. Reid, is a scale of fees based upon the minimum charges made by respectable and responsible attorneys here for the same service and responsibility. I have always felt that it was an injustice to the attorney to require any part of these fees to be paid to the company's manager. The devision was acceded to at the time when established under the belief that if the company's expenses were kept down until it was demonstrated that its business in Oregon would be profitable that the hon. directors would then feel disposed to make such allowance for the pay of its manager, &c., as to give to each one em-
155 ployed in the Co'y's service ample compensation for services rendered. The business of the company is now in such a

prosperous condition as, I think, entitles me to ask that I be allowed to receive for my services in their behalf at least the minimum fees charged for like services by gentlemen in equal standing in my proffession here, which would be the entire fees now charged borrowers and out of which there is now paid Mr. Ried one-half of one per cent. on the entire amount of the loan. It would be no object to, but, in fact, a loss, for me to continue to act as the attorney of the company if the fees actually received by me are to continue as at present.

* * * * * * *

On the matter of attorneys' fees it has been for some time past my intention to express my views, but as a visit from one or more of the directors was anticipated I concluded to let the matter rest until, being present, they could ascertain for themselves the truth or falsity of my statements, which, as I spoke to you of the matter when here, I presume you have done.

Very respectfully, your ob'd't servant,

ELLIS G. HUGHES.

And a resolution of the Oregon and Washington Trust Investment Company, Limited, of date November 23d, 1876, in terms following:

"Attorney.—That Mr. Hughes, the company's attorney, be remunerated by fees charged borrowers in terms of scale of March, 1875, and now current. The directors trust that these rates of remuneration, which, along with the relative appointment, are to continue during their pleasure, will be satisfactory to all concerned."

And, having introduced other testimony as to the value of the service of issuing the certificates sued on, the defendant, without offering any other testimony as to the terms of the contract
156 with the plaintiff, rested its case.

Whereupon the plaintiff, for the purpose of showing the meaning and intent of the resolution of November 23, 1876, offered in evidence by the defendant, offered in evidence a letter of John Leng, of November 24th, 1876, in terms following:

"113 PANMURE ST., DUNDEE, 24*th Nov.*, 1876.

" E. G. Hughes, Esq., Portland.

" DEAR SIR: My colleagues have cordially adopted my recommendation that you receive your fees according to the scale now subsisting, without any deduction. This will take effect 1st January & I hope will be quite satisfactory to you.

" I learned in the Eastern States that the mortgage form of one large lending company provides that the expenses paid to the attorney in the event of foreclosure shall be such sum as the court may consider reasonable or a reasonable sum. They say the borrower never objects to this and the attorney is always allowed what satisfies him. Would it not be well for you to adopt this?

" I am, dear sir, yours faithfully,

"JOHN LENG."

tifies that the title to the property at the date of the record is absolute, in fee simple.

In a majority of instances there is no question about the title; the record contains the evidence. He does not warrant it beyond the statement that the title is good according to the record of deeds, and he is only responsible for ordinary skill and ability in that respect. For instance, there might be an error with the registry. The clerk may have recorded the mortgage under the head of deeds. The purport and effect of this certificate is simply this: The plaintiff certifies to this conclusion, that the title to this property, as it appears by the record, is good.

There is no extraordinary responsibility assumed by Mr. Hughes at all. My conclusion is, then, that the plaintiff undertook to do this duty. It became necessary to inform the company, in some way agreed upon between them, that a mortgage was a valid security for a loan—that the title was good—and the mode of doing so was a matter of agreement between them. He simply gave his judgment to them, and this as a necessary part of his duty, and therefore he is not entitled to recover any additional compensation for these services. On this conclusion, of course, your
162 verdict must be for the defendant.

I am asked by counsel for plaintiff to submit a question to you specially, one which I had thought of before and now submit to you. I want you to say specially what these services were worth, if anything, over and above what the plaintiff received from the borrowers. It appears from his own statement that he received $30,000 from the borrowers. Taking all the circumstances into consideration, you will find specially whether the service rendered by the plaintiff was worth more than what he received from the borrowers or not, and, if more, how much.

To which charge the plaintiff at the time duly excepted as follows:

To the construction given by the court to the terms of the contract made between him and the Oregon and Washington Trust Investment Company, Limited, by the writings offered in evidence, and the instruction that under the same he was bound to issue the certificates sued on for the fees received by him from borrowers, and that the jury should find for the defendant.

To the instruction given by the court for a special finding as to the value of the service of issuing the certificates, in that the plaintiff asked for a special finding as to such value as independent of any payment, the claim of the plaintiff being that no payment whatever had been made thereon, and that the fees collected from the borrowers were to pay for other services, and in no part or manner to apply as pay for the certificates.

Inasmuch as the said several matters so given in evidence and in the instructions to the jury so by the plaintiff objected and excepted to as aforesaid do not appear by the record of the verdict in
163 this cause and the plaintiff did then and there propose his aforesaid objections and exceptions to the opinion of the judge and request him to put his seal to this bill of exceptions con-

taining the several matters excepted and objected to, I, Mathew P. Deady, judge of the above-entitled court and the judge before whom said cause was tried, at the request of the party objecting, have signed and put my seal to this bill of exceptions on this 28th day of February, A. D. 1887.

MATTHEW P. DEADY,
*U. S. District Judge, Oregon.*

(Endorsed:) Filed February 28th, 1887. R. H. Lamson, clerk, by R. B. Lamson, deputy.

164 And afterwards, to wit, on the 28th day of December, 1886, there was duly filed in said court a bond on appeal in words and figures as follows, to wit:

165 In the Circuit Court of the United States for the District of Oregon.

ELLIS G. HUGHES
*vs.*
THE DUNDEE MORTGAGE & TRUST INVESTMENT COMPANY, Limited. } No. 1065.

Know all men by these presents that we, Ellis G. Hughes, J. W. Kern, and P. W. Gillette, are held and firmly bound unto The Dundee Mortgage and Trust Investment Company, Limited, in the sum of two hundred and fifty dollars, to be paid to the said The Dundee Mortgage and Trust Investment Company, Limited, executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated December 18th, 1886.

Whereas the above-named Ellis G. Hughes has taken a writ of error to the Supreme Court of the United States to reverse the judgment in the above-entitled cause by the circuit court of the United States for the district of Oregon:

Now, therefore, the condition of this obligation is such that if the above-named Ellis G. Hughes shall prosecute said writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

ELLIS G. HUGHES. [L. S.]
J. W. KERN. [L. S.]
P. W. GILLETTE. [L. S.]

Signed, sealed, and delivered in presence of—
HENRY WAGNER.

UNITED STATES OF AMERICA, } ss:
*District of Oregon,*

I, J. W. Kern, being duly sworn, depose and say that I am one of

the sureties in the foregoing bond; that I am a resident and freeholder within said district, and that I am worth, in property situated therein, the sum of two hundred and fifty dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

J. W. KERN.

Subscribed and sworn to before me this 18th day of December, 1886.

[SEAL.] HENRY WAGNER,
*Notary Public for Oregon.*

UNITED STATES OF AMERICA, *District of Oregon,* } ss:

I, P. W. Gillette, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and freeholder within said district, and that I am worth, in property situated therein, the sum of two hundred and fifty dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

P. W. GILLETTE.

Subscribed and sworn to before me this 27th day of December, 1886.

[SEAL.] HENRY WAGNER,
*Notary Public for Oregon.*

[Endorsed:] No. 1065. U. S. circuit court, district of Oregon. Ellis G. Hughes *vs.* The Dundee Mortgage and Trust Investment Company, Limited. Bond. (Original endorsed:) Filed Dec. 28, 1886. R. H. Lamson, clerk. Approved. Deady, J.

166 In the Circuit Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA, *District of Oregon,* } ss:

I, R. H. Lamson, clerk of the circuit court of the United States for the district of Oregon, do hereby certify that the foregoing is a true copy of the record and of all proceedings, including the opinions of the court, in the cause entitled Ellis G. Hughes *vs.* The Dundee Mortgage and Trust Investment Company, Limited, in said court determined.

Witness my hand and the seal of said court this September 26, 1887.

[Seal United States Circuit Court, Oregon.]

R. H. LAMSON, *Clerk.*

167 DISTRICT OF OREGON, *ss:*

I certify that on the 10th day of February, 1888, at Portland, Multnomah county, in said district, I duly served the within "statement of error," etc., upon the therein named The Dundee Mortgage and Trust Investment Company, Limited, *of* the firm of Whalley, Bronaugh and Northup, attorneys for the said company, by delivering to E. C. Bronaugh personally a true copy of said "statement of error," etc., duly certified by me as U. S. marshal.

JOHN MYERS,
*United States Marshal,*
By CHAS. N. WAIT, *Deputy.*

168 In the Supreme Court of the United States.

ELLIS G. HUGHES, Plaintiff in Error,
*vs.*
THE DUNDEE MORTGAGE AND TRUST INVESTMENT COMPANY, Limited. } No. 1315.

Error to the circuit court of the United States for the district of Oregon.

The defendant in error above named is hereby notified that, pursuant to the rule declared March 28, 1887, by the Supreme Court regulating the printing of records and transcripts in that court in the above-entitled cause, the plaintiff in error will rely upon the following errors in the record, to wit:

1. The court below erred at the trial of said cause in instructing the jury that under the contract contained in the letters and other writings introduced by both parties as containing and constituting the contract under which the plaintiff issued the certificates sued on, and which writings are set out in the bill of exceptions, the plaintiff was bound to issue such certificates for the fees received by him from borrowers, and that the jury should find for the defendant; to which instruction the plaintiff duly excepted, and the exception was allowed.

2. The court below erred at the trial of said cause in instructing the jury to make a special finding as to the value of the service of plaintiff in issuing said certificates of title over and above the fees received from borrowers, there being no such question in the case under either the pleadings or evidence; to which instruction the plaintiff in error duly excepted, and the exception was allowed.

169 The defendant will further take notice that the plaintiff in error proposes to print and so designates the following portions of the record as sufficient to present the error relied on in this cause, to wit:

1, the complaint; 2, the last amended answer; 3, the reply to the last amended answer; 4, the bill of exceptions; 5, the final judgment entry.

J. N. DOLPH,
*Counsel for Plaintiff in Error.*

[Endorsed:] In the Supreme Court of the United States. No. 306. Ellis G. Hughes, plaintiff in error, *vs.* The Dundee Mortgage and Trust Investment Company, Limited. No. 1315. Statement of error and designation by pl'ff in error of portions of the record to be printed. J. N. Dolph, counsel for plaintiff in error.

[Stamped:] Office Supreme Court U. S. Filed Feb. 21, 1888. James H. McKenney, clerk.

Endorsed on cover: Oregon C. C. U. S. No. 306. Ellis G. Hughes, plaintiff in error, *vs.* The Dundee Mortgage and Trust Investment Company, Limited. Filed November 28, 1887.